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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RM-7984

In the matter of

Amendment of the Commission's Rules to
Require Continuous Sponsorship Identification
for Program-length Commercials

To: The Commission

**Opposition of the
Association of Independent Television Stations, Inc.**

The Association of Independent Television Stations, Inc. ("INTV"), by its counsel and pursuant to §1.405 of the Commission's Rules and Regulations, hereby submits its opposition to the Petition of Center for the Study of Commercialism *et al.* for Declaratory Relief Regarding Sponsorship Identification Announcements for Infomercials Which Do Not Comply with the Requirements of the Communications Act ("Petition").¹ Therein, the petitioners seek Commission action of one sort or another requiring a continuous sponsorship identification during program-length commercials. The stated basis for petitioners' request for Commission action is its unsubstantiated allegation that "consumers and viewers are misled into believing that

¹See Public Notice, Report No. 1889 (May 11, 1992).

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infomercials are not commercials, but are instead news or entertainment."²

INTV is a non-profit, incorporated association of independent television stations. Contrary to petitioner's bald assertions, independent television stations hardly stalk the recesses of the programming market for "inexpensive fare to fill the daily programming schedule." Petition at 10. The average UHF independent spent nearly five million dollars, and the average VHF independent spent nearly \$28 million for programming in 1990.³ What enables independents to buy attractive programming is advertising revenue, broadcasting's sole revenue stream. Advertising in the form of infomercials has become an additional source of revenue, and many independent stations have chosen to broadcast infomercials. The benefit to the stations from a new source of advertising revenue is significant at a time when broadcast revenues have been battered by a declining economy and more intense competition from cable. Therefore, when more governmental intrusion into broadcast advertising practices is suggested, INTV must urge judicious reticence rather than regulatory recklessness on the Commission's part.

²Petition, Summary.

³1991 NAB/BCFM Television Financial Report at 102, 113.

INTV opposes petitioners' request as the epitome of a solution in search of a problem. Petitioners provide no basis whatsoever for their allegations that consumers are misled or deceived -- no surveys, no affidavits, nothing beyond their own assertions. The Commission must have more than that or confront well-founded claims that whim and caprice have eclipsed sound reasoning and substantial evidence. The admonition of the court in *Home Box Office v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) *cert. denied* 434 U.S. 829 (1977) (quoting *City of Chicago v. FPC*, 458 F.2d 731, 742 (D.C. Cir. 1971) rings true and bears repeating:

[A] regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist.

Yet, petitioners would have the Commission plunge ahead without producing a single consumer who even claims to have been harmed by any alleged inadequacy in the Commission's sponsorship identification rules.

Moreover, petitioners are asking the Commission to assume redundant responsibility for matters over which another federal agency, the Federal Trade Commission, has exercised its jurisdiction to prevent deception.⁴ Whereas petitioners characterize the FTC's enforcement activities as inadequate, they bring to the Commission not one single specific example

⁴*E.g.*, *Twin Star Productions, Inc.*, 55 Fed. Reg. 17494 (April 25, 1990).

of an allegedly deceptive infomercial. The same infirmity afflicts petitioners' arguments that self-regulation has been inadequate. In the absence of a demonstrable problem, the efficacy of various solutions is moot.⁵

Finally, regarding their request for a declaratory ruling, petitioners overstate the requirements set forth in Section 317 of the Communications Act, 47 U.S.C. §317, and the Commission's Rules, 47 CFR §73.1212. The statute and the rule require "an announcement," not a continuing identification. No stretch of the statute or rule could extend to such a broad and novel interpretation.⁶

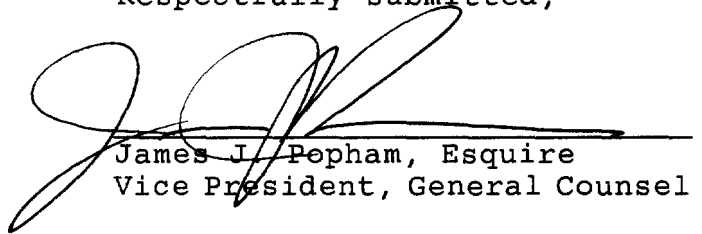
Alternatively, of course, petitioners have sought to have the Commission initiate rule making to amend the rule. Whereas such a course would be the procedurally correct course, no valid basis for petitioners' concerns has been proffered. Therefore, no Commission action is warranted.

⁵Assuming *arguendo* petitioners could demonstrate that widespread deception was afoot in the land (nee' wasteland), the FTC would be the proper forum, as, indeed, it has been.

⁶*Sponsorship Identification Rules*, 34 FCC 829, 831 (1963), cited by petitioners (Petition at 16), for example, had nothing to do with the form of the sponsorship identification announcement, but with the need to assure that an announcement was made when employees, as well as licensees received consideration for broadcast of material.

In view of the above, INTV respectfully urges the Commission to dismiss the Petition without further action.

Respectfully submitted,



James J. Popham, Esquire
Vice President, General Counsel

**Association of Independent
Television Stations, Inc.**

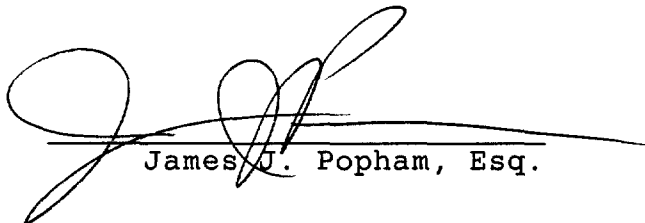
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June 10, 1992

CERTIFICATE OF SERVICE

I, JAMES J. POPHAM, hereby certify that on this 10th day of June, 1992, I have caused to be served by first-class mail, postage prepaid, a copy of the foregoing "Opposition" addressed to the individuals listed below:

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